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Attorneys for Defendant  
Moyer Products, Inc.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

MAXIM I PROPERTIES, a general  
partnership,  
Plaintiff,  
vs.  
A.M. BUD KROHN, ET AL.,  
Defendants.  
AND RELATED CROSS-ACTIONS.  
Case No. 5: 12-CV-00449 LHK  
STIPULATION AND PROPOSED ORDER  
TO AMEND SCHEDULING ORDER TO  
EXTEND PLEADING DEADLINE  
Action Filed: January 27, 2012  
Trial Date: February 18, 2014

Following the July 11, 2012, Initial Case Management Conference in this matter, this Court issued a Case Management Order on July 13, 2012, which includes a September 17, 2012, deadline for defendants to file pleadings. The Case Management Order also set a further Case Management Conference on October 3, 2012. For the reasons set forth below, the parties to this action stipulate to extend the deadline for filing or amending responsive pleadings, cross-claims, counterclaims, and third-party complaints by defendants until October 12, 2012, and seek an order from this Court extending that deadline.

III

I.

## **DEVELOPMENTS SINCE CASE MANAGEMENT CONFERENCE**

Several things have happened since the Case Management Conference, and other developments are anticipated but have yet to come to fruition. Foremost was plaintiff Maxim I Properties' decision to dismiss all defendants but Moyer Products, Inc. ("Moyer"). The case now consists of plaintiff's complaint against Moyer, and Moyer's cross-claims against the co-defendants originally named by plaintiff. Nearly all of the original defendants need to file pleadings in response to Moyer's cross-claims, and those pleadings are likely to include cross-claims for contribution against all of the other parties. In other words, once the parties file responsive pleadings, there is likely to be a landslide of contribution claims that will result in the need to file literally dozens of responsive pleadings. In total, the cross-claims and responses to those cross-claims that are likely to be filed by the September 17, 2012, deadline will exceed 100 distinct pleadings.

Furthermore, DTSC has recently indicated that it intends to amend its Enforcement Order by, among other things, dropping some of the named respondents and adding others. DTSC has indicated that it will issue such an amended order by October 1, 2012. The total number of respondents that will be named in the amended order is at least 66, and, depending on how many current respondents DTSC decides to drop from the order, as many as 75. If the September 17 deadline remains in place, Moyer intends to join as third-party defendants to this litigation the entities named by DTSC as respondents that are not already parties to this action.

Another significant development is Moyer's efforts to organize a group of parties under an interim cost sharing agreement in order to conduct the site investigation required by the California Department of Toxic Substances Control ("DTSC"). Moyer, through its consultant, Roux Associates, Inc., has developed a proposed scope of work to accomplish the site investigation. (This scope of work covers the tasks required to gather the necessary data and writing a report to present the analysis of that data. DTSC's requirements are not limited to investigatory work - DTSC will require further reports that analyze remediation options, etc.)

1 Moyer has used this scope of work, which has been discussed with DTSC, to prepare a cost  
 2 estimate.

3 Moyer invited representatives from all parties for whom Moyer had contact information  
 4 (a list that included current defendants as well as entities named in DTSC's enforcement order  
 5 but not currently named as parties to this litigation) to a telephone conference that was  
 6 conducted on September 5, 2012. During that telephone conference, Moyer proposed the  
 7 formation of a cost-sharing group to conduct the required site investigation. Moyer asked each  
 8 party that participated in the telephone conference to respond to the proposal by September 14,  
 9 2012.

10 If a sufficient number of parties respond that they are willing to enter into an agreement  
 11 to conduct the required site investigation, Moyer intends to circulate a draft agreement by  
 12 September 21, 2012, and hopes to finalize such an agreement by September 28, 2012 (this  
 13 agreement would provide for an interim allocation of costs, which would not be binding on the  
 14 parties for purposes of final settlement or in the event that allocation was litigated to  
 15 judgment).

16 Furthermore, if such a group can be formed, Moyer anticipates that the parties will ask  
 17 this Court to stay this litigation. Participation in the cost sharing agreement and the site  
 18 investigation effort will likely only make sense to many or all of the parties if they are not  
 19 simultaneously incurring litigation expenses. Nonetheless, as discussed at the Initial Case  
 20 Management Conference, the pending litigation is necessary to trigger what insurance  
 21 coverage exists. Therefore, a stay of the litigation would allow parties participating in a cost  
 22 sharing agreement to avoid litigation costs, but insurance carriers would not withdraw from  
 23 participating in resolution of this matter.

24 **II.**

25 **REQUESTED RELIEF**

26 The current Case Management Order requires all parties to file responsive pleadings or  
 27 to amend their pleadings, including the filing of third-party complaints, by September 17,  
 28

1 2012. That date does not allow the parties sufficient time to determine if a cost sharing  
2 agreement can be worked out before filing a significant volume of pleadings.

3 Amending the deadline for filing responsive pleadings will allow the parties to  
4 determine if an agreement can be reached on conducting the initial site investigation required  
5 by DTSC without the need for filing responsive pleadings. If such an agreement cannot be  
6 reached and therefore the parties face no choice but to litigate this dispute, changing the  
7 deadline from September 17 to October 12 will have no significant impact on the course of this  
8 litigation, as the parties are not seeking to have any other date in the Case Management Order  
9 changed at this time.

10 If, on the other hand, an agreement can be reached, the parties anticipate discussing  
11 with the Court at the October 3 Case Management Conference how to keep the parties'  
12 litigation expenses to a minimum, which would likely take the form of a stay of the litigation.  
13 Such a stay would allow the parties to conduct the site investigation, which is necessary for the  
14 parties to negotiate a final settlement, because without the site investigation, no analysis of a  
15 remedial strategy can occur, and without the selection of a remedial strategy, there is no way to  
16 even estimate the total amount of response costs that will be necessary.

17 An extension to October 12, 2012, will also allow the defendants to align the parties  
18 named as respondents by DTSC to its enforcement order with the parties to be joined as third-  
19 party defendants to this litigation.

20 Therefore, pursuant to this stipulation, the parties respectfully request this Court to  
21 amend the current Case Management Order's September 17, 2012, deadline for further  
22 pleadings to provide that responsive pleadings, amendments, and third-party complaints must  
23 be filed no later than October 12, 2012.

24 ////  
25 ////  
26 ////  
27 ////  
28 ////

1 DATED: September 11, 2012

NIXON PEABODY LLP

2 By: /s/ Lisa Cole

3 GREGORY P. O'HARA  
4 LISA A. COLE  
5 ALISON B. TORBITT  
6 Attorneys for MAXIM I  
PROPERTIES

7 DATED: September 11, 2012

ABDALAH LAW OFFICES

8 By: /s/ Richard K. Abdalah

9 RICHARD K. ABDALAH  
10 MIRIAM WEN-LEBRON  
11 Attorneys for TELEWAVE, INC.

12 DATED: September 11, 2012

13 ROUSSO & JACKEL

14 By: /s/ Jonathan Jackel

15 JONATHAN JACKEL  
16 Attorneys for MAC CAL  
17 COMPANY, INC.

18 DATED: September 11, 2012

CROWELL & MORING LLP

19 By: /s/ M. Kay Martin

20 M. KAY MARTIN  
21 THOMAS F. KOEGEL  
22 Attorneys for GREYHOUND  
23 LINES, INC.

1 DATED: September 11, 2012

DOWLING AARON INCORPORATED

2  
3 By: /s/ Daniel Jamison

4 DANIEL OLIVER JAMISON

5 Attorneys for MC&L, INC., named herein  
as MADERA CLEANERS & LAUNDRY,  
INC.<sup>1</sup>

6  
7 DATED: September 11, 2012

BARG COFFIN LEWIS & TRAPP LLP

8  
9 By: /s/ Joshua Bloom

10 JOSHUA BLOOM

11 DAVINA PUJARI

12 Attorneys for SPACE  
SYSTEMS/LORAL, INC.

13 DATED: September 11, 2012

14 ARCHER NORRIS

15 By: /s/ Probal G. Young

16 PROBAL G. YOUNG

17 Attorneys for CENTRAL  
COATING CO. INC.

18  
19 DATED: September 11, 2012

BURNHAM BROWN

20  
21 By: /s/ Kimberly Chew

22 KIMBERLY CHEW

23 ERIC R. HAAS

24 Attorneys for A.M. BUD KROHN  
NATIONAL AUTO RECOVERY  
BUREAU, INC.

25  
26 <sup>1</sup> This Stipulation shall not be considered an appearance of MC&L, Inc., formerly known as Madera Cleaners &  
Laundry, Inc. ("Madera Cleaners") on plaintiff's complaint, on any cross-claim, on any third-party complaint, or in  
the action. Madera Cleaner's contends that it has not been served with any cross-claim or third-party complaint  
and that its appearances at court ordered events such as ADR Conferences or Case Management Conferences did  
not constitute an appearance in this action and will not until and unless proper service is effected and a responsive  
pleading filed. The parties agree that by executing this Stipulation, Madera Cleaners has not waived this  
contention, nor has the analysis of that contention been affected by agreeing to this Stipulation.

1 DATED: September 11, 2012

DUANE MORRIS LLP

2  
3  
4 By: /s/ Jess Raymond Booth  
5 JESS RAYMOND BOOTH  
6 Attorneys for BURKE INDUSTRIES,  
7 INC.

8 DATED: September 11, 2012

9 LAW OFFICES OF STEVEN A. ELLENBERG

10  
11 By: /s/ Steven A. Ellenberg  
12 STEVEN A. ELLENBERG  
13 MARK V. BOENNIGHAUSEN  
14 Attorneys for BR & F SPRAY,  
15 COMPONENT FINISHING, INC. &  
16 SERRA CORPORATION

17 DATED: September 11, 2012

18 SILICON VALLEY LAW GROUP

19  
20 By: /s/ Jeffrey Scott Lawson  
21 JEFFREY SCOTT LAWSON  
22 Attorneys for NU-METAL, INC. &  
23 THERMIONICS LABORATORY, INC.

24 DATED: September 11, 2012

PAHL & McCAY

25  
26 By: /s/ Servando R. Sandoval  
27 SERVANDO R. SANDOVAL  
28 Attorneys for SPRAYTRONICS, INC.

DATED: September 11, 2012

LEWIS, BRISBOIS BISGAARD & SMITH

29  
30 By: /s/ Glenn Friedman  
31 GLENN FRIEDMAN  
32 ROBERT FARRELL  
33 Attorneys for THE SHERWIN-  
34 WILLIAMS CO.

1 DATED: September 11, 2012

LATHAM & WATKINS LLP

2

3 DATED: September 11, 2012

4 By: /s/ Andrea M. Hogan  
5 KARL S. LYTZ  
6 ANDREA M. HOGAN  
7 Attorneys for INTEGRATED DEVICE  
8 TECHNOLOGY, INC.

9

10 DATED: September 11, 2012

11 GOLDSBERRY, FREEMAN & GUZMAN LLP

12

13 IT IS SO ORDERED.

14

15 Dated: September 14, 2012

16   
17 LUCY H. KOH  
18 United States District Judge